

**California Commission
on
Health and Safety and Workers' Compensation**

MINUTES OF MEETING

Meeting Day and Date: Thursday, June 19, 1997

Meeting Location: State Office Building
107 South Broadway
First Floor Auditorium, Room 1138
Los Angeles, California

Commission Members Present:

Chairman James J. Hlawek
Commissioner Leonard McLeod
Commissioner Gerald O'Hara
Commissioner Tom Rankin
Commissioner Kristen Schwenkmeyer
Commissioner Robert B. Steinberg
Commissioner Darrel "Shorty" Thacker
Commissioner Gregory Vach

Commission staff:

Christine Baker, Executive Officer of the Commission

Call to Order

The meeting was called to order at 10:00 a.m. by Chairman James Hlawek.

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Welcome

Chairman Hlawek announced that the order of the meeting agenda would be changed slightly in order to accommodate schedules. The discussion on the Workers' Compensation Research Institute CompScope Study will be held immediately after the discussion on Draft Report of the CHSWC Hearing on Workers' Compensation Anti-Fraud Activities.

Adoption of Minutes

Chairman Hlawek asked for a motion regarding the minutes of the Commission meeting on April 24, which had been submitted for approval by Christine Baker. Commissioner Vach moved that the minutes be adopted. This motion was seconded by Commissioner O'Hara. There were no objections and the motion passed unanimously.

Discussion about the Revised Permanent Disability Rating Schedule

Ms. Baker summarized the discussion at the last Commission meeting in April, when DWC Administrative Director Casey L. Young presented an update on DWC activities, including DWC's adoption of a revision to the Permanent Disability Rating Schedule (PDRS).

Mr. Young stated his belief that this revision to the PDRS does not constitute a "change to the standard disability ratings", which, under Labor Code Section 4660(d), must be reviewed and approved by the Commission prior to adoption.

Also at that meeting, Ed Woodward and John McClain of the California Workers' Compensation Institute commented upon this revision to the PDRS and stated that they believe the PDRS revision did in effect change the "standard disability ratings" and, as such, do require Commission approval. Several concerns were raised, including

- The process and sequence of events by which the PDRS was developed, adopted and implemented by the Division of Workers' Compensation.
- The effect of the revised schedule both in terms of claims administration and the economic impact.
- A lack of adequate information or time to evaluate this change, and

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- The construction of the schedule itself, which raises a number of questions whether the changes made are in fact usually those changes reserved for a legislative body.

After the meeting, Commissioner Vach sent a letter requesting that staff contact the state Office of Administrative Law and ask that they review the PDRS changes in conjunction with the requirements in Labor Code Section 4660(d) and the intent of the Legislature for the Commission to review changes to the PDRS before they are adopted.

In response to Commissioner Vach's request, Ms. Baker informally contacted the Assistant Chief Counsel's office of the Office of Administrative Law (OAL) in Sacramento and discussed the timing of the adoption of the PDRS by the DWC Administrative Director, the responsibilities of Commission, and the role of OAL.

OAL informally indicated that DWC did what was allowed to adopt regulations pursuant to OAL procedures in effect at that time. DWC filed the regulations with the Secretary of State on December 27, 1996, prior to the January 1, 1997 requirement for OAL's review and approval. Therefore, OAL had no jurisdiction in this matter.

Draft Legislation and MOU

Ms. Baker also requested that CHSWC Legal Consultant Larry Swezey draft legislative language clarifying the Commission's role in reviewing and approving changes to the Permanent Disability Rating Schedule.

Ms. Baker indicated that she had also discussed this with DWC AD Casey L. Young who suggested that an interagency agreement or memorandum of understanding (MOU) be established between the DWC and the Commission in lieu of legislation. This agreement would insure mutual understanding of the process to be followed in any future PDRS changes. Discussion clarified that although the recent changes to the PDRS had already been adopted, the proposed MOU would address procedure for any future changes such as those that may be suggested as a result of the RAND study.

Ms. Baker reported that the options before the Commission are to draft a Memo of Understanding between the Commission and DWC that will outline the responsibilities and/or legislation that would insure that any future changes to the PDRS will require review by the Commission.

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Commissioner Vach referenced Assembly Bill 1239 authored by Assembly Member Brewer which may dovetail with what the Commission is doing. It was observed by Commissioner O'Hara that the Brewer bill didn't have a great chance of passing.

Commissioner Vach said that with the previous experience of the Commission regarding changes to the PDRS, that the best course of action would be to pursue an action that would prevent being blindsided by any future changes.

Commissioner Hlawek agreed with a proactive approach and stated that if this issue comes up in the future, there should be an understanding of how the Commission will handle it.

Commissioner Hlawek asked if Commission staff had a recommendation. Ms. Baker replied that since it can't be determined if the Brewer bill will pass, that the Commission should probably pursue both legislation and a MOU. If the legislation does pass, the understanding would be on a permanent basis. If it doesn't pass, the MOU would still be in effect. In essence, the MOU would be a short term solution until or unless legislation is passed.

Commissioner Steinberg expressed concern that a problem could be created by having two tracks which may end up as two different versions. He suggested that the Commission pursue the MOU and if still needed, pursue legislation at a later date. Larry Swezey, legal consultant to the Commission, expressed the opinion that both avenues require the Commission to decide whether it wants approval authority on all changes to the schedule or only those affecting Standard Disability Ratings.

Commissioner Vach agreed that these were important issues. He said that the RAND report may require the Commission to become heavily involved with this issue and not having the legislative authority to act on any of their recommendations causes him concern.

Commissioner McLeod made a motion to pursue the MOU as a temporary measure and pursue legislation as a permanent fix. Commissioner O'Hara expressed concern that the Commission may be extending itself beyond what the Legislature gave it a mandate for in this area. He suggested that the legislative approach be held over until the July meeting and only proceed at this time with the MOU which has Commission agreement.

Commissioner McLeod amended his motion to proceed with the MOU and discuss the proposed legislation at the July 25, 1997 meeting in San Diego. Commissioner O'Hara seconded the motion and it was unanimously passed by the Commission.

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Still on the subject of permanent disability ratings, Commissioner Vach stated that it had been brought to his attention that an overloaded DWC office sent about 100 cases to another DWC office for rating. Inadvertently, both boards rated the cases. It was discovered that the ratings differed by thousands of dollars per case. He commented that the kind of inconsistency taking place within DWC itself illustrates the complicated nature of the current rating system, even without factoring in the changes resulting from the new rating schedule. Although one must appreciate that this sort of thing can happen in a system subject to interpretation about what the doctor meant in any particular situation, he stated that this is just an example of how intently the Commission should pay attention to this issue.

Status Report on the WCIRB Study of the Revised PDRS

Christine Baker stated that the Workers' Compensation Insurance Rating Bureau (WCIRB) had convened a special committee to study the fiscal impact of the recent DWC changes to the Permanent Disability Rating Schedule. Ms. Baker reported that Dave Bellusci of the WCIRB was present to discuss the activities of that committee.

Dave Bellusci, Executive Vice President and Chief Actuary of the WCIRB, reported that the role of the special committee is to measure fiscal impact of the changes to the Permanent Disability Rating Schedule. Its role is not to evaluate whether those changes are appropriate.

Mr. Bellusci related that DWC Administrative Director said that, based on their study, the changes would impact the average permanent disability about 2.5% . However, CWCI did some preliminary studies which suggested that the cost impact may be twice as high, as much as 4% to 6%. Secondly, there were very different impacts depending on the industry. Many blue collar industries saw significant decreases for certain injuries while white collar industries tended to see larger increases.

There were also some concerns with the structure of the DWC study. In the study, the same rater who did the original rating rerated the case with the original rating in front of them and with the stated objective of cost neutrality. So there was some concern that there may have been biases that pressed changes in both directions.

As a result of these concerns, a special committee was formed two months ago comprised of representatives from the insurance industry, DWC, CWCI, and the Commission on Health and Safety and Workers' Compensation to sort out the issues.

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Mr. Bellusci reported that a couple issues were clear early on in the meetings. First, most important to the group was the differential in ratings by industry. It is critical to have an accurate benchmark. Even if the cost impact is essentially zero overall, if there are industries that are going to see their permanent disability ratings go up by 20% and industries that are going to see them go down by 20%, the committee felt very strongly that it is important to identify those relative changes.

Secondly, it became clear that the study couldn't be done by some quasi-mechanized process whereby they would look at a database and then replace the old age and occupation adjusted factors with the new one and measure it that way. This wouldn't work because besides changes to age and occupation adjustment factors, there were significant changes in terms of new occupations and the way the schedule treats multiple restrictions on a medical report as well as many other changes. So it was clear that there was going to be a significant impact on some of the subjective factors which meant that a mechanized process of just changing the age and occupational factors wouldn't work. Instead, some kind of survey approach where rerating is involved will have to be used, which will significantly increase both the cost and time involved.

So, Mr. Bellusci said a dual approach will be used. A short term, less expensive, less time consuming process will be pursued first and if necessary, a more expensive, more time-consuming process will be used.

The first approach is to work with the original DWC study which surveyed 2,000 permanent disability ratings done in 1993. A computer summary of the results of those ratings will be used to map to an industry classification system in order to get some differential by industry of the impacts. The second step will be a re-sampling of a portion of those 2,000 claims that will be blindly rated under the new system without access to the previous rating.

Mr. Bellusci reported that they are moving forward in this area but there is concern that because the files are old, DWC has indicated that many of the original files may no longer be available. That means a very limited sample of only 200 cases may be available. And even if the numbers of files are there, there are concerns about whether they are randomly distributed across the state or are they just going to represent some DWC offices that are slower than others in getting rid of their files.

Given that, the hope is to determine to what extent there was significant evidence of bias in the DWC study based on the blind re-ratings of the estimated 200 available cases. If it is found that there is no significant evidence of bias, they will distribute the 2.5% overall cost from the DWC study by industry based on the computer records that can be mapped back to classification to reflect the 2.5% across different

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industry groups. Mr. Bellusci said that this would be the ideal plan. It can be accomplished quickly and at a minimal cost.

If that approach doesn't work, then they will have to start all over drawing a survey of about 1,500 to 2,000 claims from their own records, stratifying them, and surveying insurers to get cases and medical records for a rating. A group of DEU raters, retired judges, ex raters, or some other group will be selected to blindly re-rate the cases under the new schedule. However, this approach is time consuming and costly. The results will then be analyzed by industry groups to try and get some sense of the cost impact.

Mr. Bellusci stated that it is not an exact science because they are measuring something that has a lot of subjectivity built into it. He stated that it is going to take some time before the courts interpret the new schedule and practices are well established. Until that happens, it will be difficult to get a good handle on what the fiscal impact will be.

Commissioner Vach responded that he doesn't believe that we should worry about what the courts are going to do about the system so much as we need to worry about what the system is doing with the courts.

Mr. Bellusci clarified that he was only implying that there is still a lot of uncertainty in how some things, such as multiple work restrictions will be integrated under the new schedule. Practices such as these will be established as the schedule is used.

In response to a question from Commissioner McLeod asking for the time frames estimated for their study, Mr. Bellusci replied that the DWC Disability Evaluation Unit (DEU) is in the process of gathering the 200 files. They would like to move on those 200 cases in the next couple of weeks. If the 200 file approach works, they hope to have results by August. If they have to go with 2,000 files, the results will not be available until mid-September.

Commissioner Vach stated that he would hate for WCIRB to start all over again if there wasn't a need for it. Mr. Bellusci responded that they would also like to avoid doing a major resampling.

Discussion on Draft Report of the CHSWC Hearing on Workers' Compensation Anti-Fraud Activities

Christine Baker reported that findings and recommendations from the Commission's Hearing on Workers' Compensation Anti-Fraud Activities held in

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February had been sent to Commission members and members of the CHSWC community for their comment. Comments had been received from both Commissioners and community members.

Ms. Baker reported that Commissioner Vach made suggestions in two areas. The first suggestion was to modify the recommendation on page 8 of the draft report regarding the receipt of workers' compensation benefits by applicants who have been convicted of fraud. Second, Commissioner Vach recommended a slight change on page 13 regarding long term funding for Fraud Grant recipients.

Ms. Baker said that the California Applicant's Attorney Association commented on the draft fraud hearing report and the Department of Insurance Fraud Bureau called yesterday raising some concerns but have not yet submitted those concerns in writing.

Chairman Hlawek stated that Keith Newman of the Fraud Bureau had spoken with some Commissioners and indicated that they would like additional time to review the report. Chairman Hlawek said that he had no problem delaying the release of the report for another month or so since there was a lot to be gained from the Department of Insurance input. He suggested that the Commission delay the release of the report to include DOI comments.

Ms. Baker suggested that the report also be left open to include comments from the public. Chairman Hlawek agreed.

Commissioner Steinberg suggested that an invitation be extended to all who have made comments on the anti-fraud activities to attend the next meeting to voice their concerns.

Discussion on the Workers' Compensation Research Institute CompScope study

Ms. Baker reported that there are two groups proposing large studies for which they would like Commission participation. She said that a decision didn't need to be made immediately and recommended holding off on a final decision until after the new fiscal year budget is approved.

The first presentation was made by Ann Clayton, Deputy Director of the Workers' Compensation Research Institute (WCRI). She reported that WCRI is conducting a study at the request of their members and state officials which will evaluate workers' compensation system performances on a number of measures that lead to an outcome consistent with workers' compensation goals in various states. They will work with interest groups, labor, and management within a number of states

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over the next five years and publish two major products. One is the Annual State Performance Report for each individual state that will eventually show over two, three, four, five and ten years, the trends on certain outcome measures for meeting system goals. They will also publish a Multi State Comparison on an agreed upon set of outcome measures leading toward the accomplishment of these goals.

In measuring the workers' compensation system performance, the study would ask what are the goals of the system, how are they doing in achieving those goals, where and how can it improve, what can be learned from other states, and what is the plan for continued successes.

The study is being called a system performance and benchmarking report. Ms. Clayton explained that benchmarking simply means comparing where the states are now to where they want to be on a regular basis. This is done according to what employer and employees suggest should be accomplished by the workers' compensation system.

Some goals of the system include reducing accidents and occupational diseases; payment of prompt, adequate, and equitable benefits at reasonable costs to employers; delivering prompt, adequate, cost effective medical treatments to facilitate recovery and return to work; minimizing permanent physical residuals and lifetime disability; resolving disagreements as cost effectively and promptly as possible; creating a cost effective administrative agency; and monitoring the achievement of these goals on an ongoing basis.

Ms. Clayton stated that she thinks WCRI was asked to undertake this study because of its history of working with policy makers to look at and identify issues of interest within workers' compensation and being able to provide options and credible objective information over time with which policy makers can make good public policy.

Ms. Clayton said that the WCRI's not-for-profit status and the fact that their mission is to be a catalyst for significant improvement in workers' compensation systems puts them in the position to help both employers and employees in designing a monitoring system that allows them to determine whether or not they are accomplishing what they intended. The study will allow states to look at early warning signs. For instance, if over a period of time a state sees that its performance in key areas important to employers and employees is increasing or decreasing, then it can channel its limited resources into those areas.

Ms. Clayton reported that their study came about as a result of several reasons.

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The first one has to do with a quality initiative that has been going on for some time that combines the concept of continuous improvement rather than radical change in evolving procedures and policies in a way that is less disruptive to the organization and less disruptive to the system as a whole. This paradigm in workers' compensation is known as the Crisis-Reform-Crisis. This change process that we've all struggled with for years is not only wasteful, but it also prevents system predictability. It results in stake holder polarization rather than state holder cooperation and collaboration. It also undermines the insurance market which ends up being very costly in the long run for both employees and employers. This study will implement data driven techniques that will provide states with information to be able to monitor its system on an ongoing basis.

Secondly, agencies have come to WCRI saying that they need information to help measure the effect of public policy programs. Many states are heading toward performance budgeting where the legislature determines the level of funding for public programs based on the return on investment. Workers' compensation agencies have struggled with how to measure the outcome of the workers' compensation program. As a result they have come up with the Electronic Data Interchange which standardizes information and will allow agencies to measure outcome for the first time. They have also struggled with the difficulty in being able to explain outcome because the workers' compensation system is so complex. It is a difficult social, political, legal, and economic system that takes a lot of study to be able to control for the differences. WCRI thinks they can now do that and help states make sense of it.

Ms. Clayton said that ultimately, the project will provide participating states an annual performance report that will measure the performance of state systems in areas such as safety, benefit adequacy and equity, timeliness of benefit payments, litigiousness, etc. and then show those states how they compare with others. For the last 12 months WCRI has been working with their own researchers as well as consultants in designing the methodologies. Some of those methodologies have already been piloted because the WCRI Executive Director would not agree to do them until he was convinced it could be done. To date, no one has been able to do comparison reports between states because of the difficulty in controlling for differences between state systems, differences between industrial mix and a lot of other variations that have to be controlled for in order to get an accurate comparison.

Ms. Clayton reported that the first four states they have chosen to work with are Minnesota, Massachusetts, Pennsylvania and California. Massachusetts and Pennsylvania have fully funded their programs. Minnesota and California have not yet raised all the money for participation on an ongoing basis. She reported that

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WCRI is about \$100,000 short for California which is why she is asking for Commission funding.

She stated that they would like to do four states initially and add five more states every year thereafter. There are about nine states that are interested in being in the second round but they only have the capacity to do five. She said that it isn't entirely impossible that WCRI will be willing to do California even if they didn't raise all of the needed \$100,000. But the other states will not be willing to subsidize it on an ongoing basis. But the real value in the product is being able to look at it over time and look at where a state compares to others.

Commissioner Rankin questioned which state officials requested the study and who comprises the WCRI membership.

Ms. Clayton replied that the members are national and regional insurance carriers as well as employers. She said that the state officials who have requested the study include many members of the International Association of Industrial Accident Boards and Commissions (IAIABC) including representatives from Oregon, Washington, California, Wisconsin, Minnesota, and Florida.

Commissioner Rankin stated that several times the WCRI testified on the issue of utilization and persuaded legislators that when benefits increased, utilization would increase which affected the benefit increases given in recent years. However, utilization went down considerably after the 1993 reforms. As a result, workers lost many millions of dollars because utilization was wrongly figured into the workers' compensation formula. He said that he opposes funding an organization funded by the insurance industry and questioned their objectivity. He suggested that they attempt to raise the needed money from the insurance industry.

Ms. Clayton replied that she was unaware of any successful challenge to the methodology of any WCRI study. She said that there are always people who disagree with the findings and she respects that. She said that she would be happy to know if Commissioner Rankin questioned the objectivity of any previous reports and challenged him to find any successful challenge to any previously used methodologies. She suggested that labor would want to be a part of the process of designing what is going to be measured and take a look at that information before it is put out and potentially used by others.

Commissioner Vach asked if the Commission could be assured that their own researchers would be part of the process if they agreed to contribute funds toward the study. Ms. Clayton affirmed stating that unless WCRI ends up with a product that improves the system for both employers and employees, then they haven't done what they set out to accomplish. Toward that end, they welcome any involvement.

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Commissioner Vach expressed concern that the information system being developed by DWC and anticipated for use by the WCRI may not be ready in time and that it will not measure performance of some areas such as the Appeals Board.

Ms. Clayton replied that the data they use has to be representative and they have to make sure its representative of the experience of all the claims. So the sample that they get is not only reflective of the market but also of the industry mix to make sure that what they say is happening is really happening with the whole data base. She said that one of the difficulties she has had as a State Administrator is that she doesn't know who is not reporting. So when WCRI gets data from carriers, self-insured employers, third party administrators, and the State Fund, they're getting everything. Provided that it is weighed properly for the market, they wind up with a true representative sample that their researchers will stand behind.

The other piece, she said, is the administrative piece which is the fine line from beginning of dispute to resolution, can't be determined from automated data. But WCRI has quite a bit of history in reviewing actual manual claim files to get that information and intends to do that every other year in order to get some of the administrative measures showing how the administrative processes are working.

Commissioner McLeod asked if the study has been endorsed by DWC and was told by Ms. Clayton that it has received DWC endorsement via a letter from Casey Young.

Commissioner McLeod asked which labor organizations have been approached in California requesting their participation on an Advisory Board. He suggested that the California Applicant Attorneys Association be contacted. Ms. Clayton replied that an Advisory Board has not yet been created in California and noted his recommendation.

Commissioner Steinberg expressed curiosity about whether WCRI received contributions from other public bodies in other states for the funding of the study. Ms. Clayton replied that all states have funded the study differently but all have used public funds. Minnesota and Pennsylvania used a combination of state funds, rating bureau contributions, and employer contributions. Colorado is looking at legislatively appropriating the funds.

Commissioner Steinberg asked Ms. Clayton to describe the WCRI. She replied that it is a not-for-profit public policy research institute devoted to the study of workers' compensation. Located in Cambridge, Massachusetts, they have existed since 1993 and have historically focused their studies on workers' compensation systems. Studies are either contracted for or requested by legislators.

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Commissioner Steinberg asked if WCRI is funded by private organizations. Ms. Clayton explained that they are funded by their membership which is comprised of most state agencies in the United States, most of the government entities involved in workers compensation, a couple of labor organizations, national carriers, regional carriers, and employers. She said that most constituents of workers' compensation interests participate both in funding and providing WCRI with information about what should be studied.

Commissioner Steinberg stated that the request for funding by the WCRI raises the broader issue of the participation of public bodies in private studies. He said that he is not sure where the Commission stands on the subject especially in light of the recent questions surrounding the funding of the Carve-Out study and the fall-out from how that was funded. He asked if a policy had been adopted in that regard?

Ms. Baker replied that a policy has not been formally adopted as a result of the Carve-Out study. She reported that the Commission did decide to fund that single project and perhaps not receive funds from private organizations as that was not the intent of the Legislature.

Commissioner Steinberg stated that if the Commission adopts a policy regarding the acceptance of private funding for Commission studies and participating in privately funded studies, then it can short cut a lot of the requests for funding that appear before the Commission.

Commissioner O'Hara stated that it was a public policy by the Department of Finance that disallowed contributions from other sources for Commission studies. DOF policy states that we cannot receive funds but doesn't prevent the Commission from contributing to studies that the Commission cannot perform itself. He said they were two different issues.

Commissioner Steinberg replied that there is a distinction to be made. When the Commission funds a project such as the RAND study, it has control of the protocol, direction and whether or not their findings will be adopted by the Commission. He questioned to what extent the Commission wants to contribute public funds to studies that are being undertaken across the country by essentially privately funded organizations.

Commissioner Vach said that was why he asked what kind of input the Commission would have. He agreed that it was a double-edged sword. If the Commission doesn't participate then it doesn't have any control and is subject to having the studies done and not knowing or not feeling confident about whether or not it was done properly. But if the Commission does fund these studies, it can be

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construed as supporting an organization which has a bulk of its funding from various places with which the Commission does not philosophically agree.

Commission Steinberg suggested that the Commission adopt a policy to not participate in studies that it does not fully fund. He suggested that the Commission members think about his suggestion and bring it back after they have given it some thought.

Commissioner O'Hara replied that he would prefer to see requests on a case by case basis rather than adopt an overall prohibitive policy.

Chairman Hlawek agreed stating that the Commission ought to be flexible. He said that he would not want to see the Commission develop such a policy, no matter how good the intent, because of the restrictive nature of such a policy. He stated that this was an issue the Commissioners should consider and put in a future agenda for further discussion.

Discussion of Proposed Study on the Use of Social Welfare Programs by Injured Workers

Robert Reville, Mark Peterson, and Lloyd Dixon from RAND Institute for Civil Justice presented their proposed study analyzing the use of social welfare programs by injured worker and requested Commission funding.

Mr. Peterson thanked the Commission for the opportunity to conduct the research that RAND is conducting on permanent disability in California. RAND corporation is a public research policy organization. Within RAND is the Institute for Civil Justice which is the premiere public policy and empirical research entity doing studies on various areas of the justice system. The study currently being performed by RAND for the Commission is being done through the Institute for Civil Justice. Mr. Peterson is chairing the study, Lloyd Dixon is the Deputy Director, and Bob Reville is a labor economist working on the study and who would be the principal research on the proposed study for which they are requesting funding.

He reported that during the course of the last year, one of the major contributions to the Commission study has been the accumulation and the organization of a number of important sets of data available in California.

One of the key parts of that set of data is information about wages and income as reported to the State of California and the state Employment Development Department (EDD). Essentially, they have information about income for everyone who files tax returns in the State of California. This data is being used by the

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Commission funded study in order to look at the relationship between disabilities and disability ratings and various other factors and how this affects people's income. This is an important set of information for looking at, evaluating, and modifying the workers' compensation system in California because one of the principal bases for determining disability ratings and justifying the particular rating that specific individuals get is an estimate and a consideration of what someone's wage loss might be in the future.

In the course of developing this work for the Commission, Mr. Reville has identified and talked to a number of government agencies that have and probably will provide RAND with information about other sources of support for persons who are injured. In trying to figure out how to make the workers' compensation system function better, it must be studied in the context of all of the sets of programs that are available for injured workers. Programs such as welfare and government funded medical care are all undergoing substantial changes which may have significant impact on the workers' compensation system. This is an additional piece of research which is an important way both to utilize what we have learned from the data gathered so far and to extend it to address additional issues.

Mr. Peterson turned the discussion over to Bob Reville who is proposing the study and would be working on and directing the project.

Mr. Reville explained that the proposed project will look at the use of social welfare programs by injured workers, an extension of the wage loss component of the current RAND study. He said that RAND has been examining the data and have linked the WCIRB claims data to EDD data as previously described by Mark Peterson.

With access to that data, RAND has the ability to look at the wage patterns and the employment patterns of workers after they are injured. The sort of standard story that was expected to be observed in the data is that a worker will experience an injury, spend some time out of work, and then return to work at a lower wage. Then there may be some wage growth to a lower level or up to the original level depending on the case.

Approaching the data with this expectation, when they actually started to analyze the data, they found that the sort of patterns observed after an injury are far more complex than that. A significant number of people experience different sorts of labor force participation patterns. For instance, some people continue to work after they are injured and work for several quarters after their injury and then no longer work. Or they return to work and work for a few quarters, miss more time from work, return to work again, miss more time, and return again. Or they never return to work. Or they might retire after they return to work or a short time thereafter.

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There are many outcomes resulting from an industrial injury such as severe disability, time off work, early retirement, poverty, job loss, medical care and lower wages. There are also many programs to assist the injured worker such as SSI, SSDI, TD, State DI, social security, welfare, unemployment insurance, MediCal, Medicare, and workers' compensation. The study will attempt to understand how all of these programs interact which is important to understanding the financial impact of a work place injury and the role of the workers' compensation system in assisting workers after an injury.

Mr. Reville reported that an evaluation of the workers' compensation system that ignores these other programs provides an incomplete picture. Today there are other sources of support that reduce some of the wage loss that can occur as a result of an injury. Looking at income loss of injuries provides another measure of the financial impact of workplace injury that is important for public policy. This leads to another potential public policy issue of which programs fund or pay for the cost of workplace injuries. And to what extent each of these groups such as government programs, employers, or workers, pay for the cost of workplace injuries involves a number of important policy issues such as efficiency or justice that should be considered.

Additionally, the existence of other programs changes the behavior of injured workers in a way that affects the data. For example, an injured 63-year old worker may choose to retire and is never again observed in the data. We may also observe a 43-year old worker who is never again in the data. This zero that occurs in the data needs to be considered in wage loss. The 43-year old worker has a much longer period for which he will not receive any support. The 63-year old worker may have chosen to retire because of the existence of alternative support. The whole combination of these programs needs to be understood to accurately interpret what happened.

So RAND is proposing a number of research questions such as do injuries increase welfare use, does workers' compensation decrease welfare use, are workers' compensation benefits proportional to income loss, how are workplace injury costs allocated to injured workers, employers and other government programs, and what do the results imply for workers' compensation policy.

To start the research plan, RAND will examine the use of SDI, OASDI, SSI, MediCal, Medicare, UI, and SDI. These programs will be analyzed by linking the WCIRB, DEU and EDD and other administrative databases creating an unprecedented database of information on the financial impact of workplace injuries in California allowing the comparison of workers' compensation claimants to uninjured workers

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and to SDI claimants. To add texture and context to the results, RAND will interview workers and system participants.

Mr. Reville stated that another issue which will be looked at is the ways in which there seems to be a lack of information provided to injured workers. For instance, it may be that workers who are represented are more likely to apply for other sources of social welfare. This would suggest a lack of information about all of the programs and are available to injured workers and there may be some help provided simply by making workers aware of all of the support they can receive.

RAND also hopes to identify certain characteristics of claims or system practices that put workers at greater risk of having to rely upon other social welfare programs such as people with claims that close early or late. Or, depending upon the method of settlement, whether or not these have any impact upon the likelihood of the need to use other social welfare programs.

RAND will also conduct interviews with stakeholders to assure that any of the policy recommendations are feasible and to insure their relevance.

Mr. Peterson added that the most important aspect of the study is to generate information about how the various programs intersect each other. Another important feature is generating a better understanding of the role of workers' compensation as a mechanism for aiding injured workers in conjunction with other programs.

He said that it is that broad appeal that has generated some interest from the Robert Wood Johnson Foundation which may potentially pay for most of the study. It is important to work jointly with the Commission on the project because the Robert Wood Johnson Foundation interest is heightened by the collaborative effort between a research entity like RAND and a public policy government agency. More importantly, RAND expressed interest in continuing to work with the Commission in developing thoughts about details of the study. They have had the opportunity for individual discussions with Commission members and staff and have gained enormous benefit in doing so. This interaction has given RAND some direction, insight, and thoughts and they would like to have a more formal participation of the Commission. One of the ideas is to actually have the staff work with RAND in carrying out the project which will give a better sense of reality, direction and utility to their work.

Mr. Peterson asked the Commission for \$25,000 stating that although it is only a modest part of the overall budget (10%), it is still an important financial contribution. It is also important in showing Robert Wood Johnson or any other

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interested entity that might support the project that the Commission also supports the project.

Mr. Reville added that the agencies with which he has been having discussions about sharing data have also indicated that they would prefer providing data to the State of California rather than another entity or contractor. To the extent that RAND and the Commission works together, it would facilitate creating an unprecedented database of financial support for injured workers.

Commissioner Rankin said that he thinks the study is a good idea but expressed concern with some of the language contained in the RAND proposal. On page one the proposal says "the income support provided by these programs potentially replaces some of the wage levels associated with workplace injuries. For this reason, an evaluation of the adequacy of workers' compensation must recognize the availability and use of alternative Social Welfare programs for the disabled". Commissioner Rankin stated that his problem with this language was that it sounds as though RAND is evaluating the adequacy of workers' compensation based on other social programs that are available to injured workers. It implies that it is fine to shift the cost of work injuries from employers where it belongs to other social programs paid for by tax payers. He stated that the problem in California is that workers' compensation benefits have become less and less adequate as they fail to keep up with inflation. Although that may have forced workers to use other programs, that is not the way it should be.

On the second page, he referenced a passage which read "at the same time requiring firms to provide a costly benefit to injured workers from generous alternative social welfare programs that are available may impose undue cost on business and adversely affect job creation". He said that the statement is absolutely ridiculous and he questioned the value of a study where that kind of bias is expressed in the proposal.

Mark Peterson replied that the ultimate decision about who should appropriately bear the cost of workplace injuries is not something for RAND to decide. The point of the study is only to identify who is bearing the costs. Issues about how effective the workers' compensation system is in achieving its mission and the effectiveness of other programs in achieving their missions is something that needs to be understood. To the degree that people don't think one or the other of these entities is doing its job or that one program is doing what another program should be doing is something that needs to be addressed and resolved at the political level. It cannot be resolved at the level of researchers at RAND. He assured Commissioner Rankin that RAND will not propose public policy for the State of California. It is not the objective of the study. The study will only provide information from which a number of conclusions can be drawn. The hope is that this information will

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facilitate a consideration of these kinds of issues both by this Commission and by other public entities but it is not RAND's idea to usurp that discussion.

Commissioner Vach questioned what is the next step if the study identifies that in a certain social economic strata of injured worker there is wage loss which is not necessarily paid by permanent partial disability. He noted that it may be nice in theory but California can't afford a system that essentially replaces 100% of presumed wage loss. Although it is an interesting theoretical question, what California will be able to do about it in the long term is very much a question of the finances. Also, without some intra- state comparison, there is no way of knowing to what extent California is better or worse in income replacement than other states. It may be very good, or very bad. People may just use social welfare systems better or are more efficient at gaining access to these systems in California. He said that it raises very broad policy issues about social systems in this country that the Commission can never impact. The Commission will never be able to do anything about SSI and those other systems. Commissioner Vach stated that although, it is an interesting question which gives some thoughts about the permanent partial disability system, where does California go from there?

Mark Peterson replied that the proposal is not suggesting a 100% wage replacement system. However, with regard to matters of public policy, there are issues. The study will try to understand the relationship between disability and wage loss. The insight gained may certainly impact public policy. And there will be some public policy issues that speak specifically to the workers' compensation system. For instance, one of them is the preference for additional disability payment for older workers. Given that there's the same amount of money available in the system, there may be a desire to redirect that. It is not something that RAND is advocating but is a kind of public policy question that lies solely within the workers' compensation system, and there will probably be others. The point is that the workers' compensation system is affected by other programs. Welfare has changed in this county and the ability to get medical care provided by the government is likely to change substantially. The question is how will this impact the workers' compensation system? If people are not eligible for welfare, does the workers' compensation system become a welfare system of last resort? Workers' compensation may be stretched because other programs are becoming less available.

As for an intra-state comparison, it is something that RAND would like to do. He said that RAND will be happy to get whatever help the Commission can lend in trying to accomplish that. Mr. Peterson stated that he thinks the Robert Wood Johnson Foundation would also prefer an intra-state comparison.

Mr. Reville added that there are other states that are also linking their claim files to the equivalent of their EDD files. And other states are beginning to look at these

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issues in ways similar to what RAND is proposing. Although this project is the first one to look at these other issues, he fully expects that other states will want to do the same thing.

Commissioner O'Hara asked if RAND is finding that there are some injured workers who are applying for and being granted unemployment insurance at some date after they have been injured on the job.

Robert Reville replied that he expects that there may be problems in maintaining a job after returning to work and that may lead to higher use of the unemployment insurance system by injured workers than uninjured workers.

Commissioner O'Hara asked if RAND would be exploring where an injured worker ended up economically during their interviews of such injured workers. In a conversation with Commissioner McLeod, they discussed that many injured workers go into bankruptcy. He said that if that is the direction they are going with their interviews, then he would be willing to prompt the Commission to give RAND the \$25,000.

Mr. Reville replied that they had not yet written the protocol for the injured worker interviews. Their hope is to try to get an understanding of what role these programs have in the total financial impact on injured workers. To that extent, there are things they will measure just to be able to provide some texture to what they are looking at. Bankruptcy is certainly something that should be measured.

Commissioner O'Hara then made the distinction between social insurance, which is programs such as workers' compensation, state disability, and unemployment insurance and social welfare. He said that it would sound better to him if the distinction could be made because to him they are quite different.

Commissioner Steinberg said that he wasn't sure he understood the connection between this proposed study and the ongoing Permanent Disability study being conducted by RAND on behalf of the Commission. He also agreed with Commissioner Rankin that RAND's choice of words were unfortunate and left a clear indication that the point of the study is to determine the extent to which injured workers are otherwise compensated by other forms of social insurance and leave it at that. He then revisited the issue he raised in connection with Ann Clayton's proposal. He said that if the Robert Wood Johnson Foundation was going to provide most of the funding for the study, then perhaps they would contribute the rest as well and Commission funding wouldn't be necessary. He then asked for clarification as to what the Robert Wood Johnson Foundation is.

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Mark Petersen responded that the Robert Wood Johnson Foundation is a large privately endowed foundation that sponsors a lot of research in the areas of medical care delivery, medical systems, and social insurance issues. They are not regarded as having an ax to grind and are not a captive of the right or left. They have sponsored a substantial number of projects at RAND, primarily in the area of health care delivery which has been a big area of interest of theirs. But they also have broader interests for which the proposal might appeal to them for a couple of reasons. One is that it does have an issue of medical care delivery, a critical component of the workers' compensation system and some of the other social insurance programs. Second is the general issue of how to provide care and assistance for people who need it in our society. He said that Christine Baker could provide the Commissioners with further information about the foundation.

As for funding, Mr. Peterson stated that he doesn't know if they would received funding from the foundation without a Commission contribution to the study. The foundation funding is more likely if the study has the support of a state agency.

Commissioner Steinberg again expressed concern about the extent to which the study would be compromised by combining public and private funds. He said that he is trying to keep the product independent by not tainting it with funds from other sources.

Mark Petersen replied that RAND receives a lot of money from outside sources for studies. However, its conclusions are not dictated by the funds. He said that to the degree that RAND has a character, that it probably its most obstinate feature. Not only would they not expect that the nature of their research would be affected by the fact that it may be funded by the Robert Wood Johnson Foundation, neither would the Commission call the shots as much as there is respect for the Commission and its members. On the other hand, RAND is building stakeholder interviews into the study and will want to talk to Commission members. Although they don't believe as an institution that the funders call the shots, they also find that it is very useful to talk to people who know what the issues are, are interested in them, and serve in that capacity. So they expect to get guidance and some thoughts from the Commission that they will take into consideration. More of this is given if the Commission contributes money because more interaction is generated. The Robert Wood Johnson Foundation is not an expert in this area.

Mr. Peterson stated that it will be much easier to get data with the Commission as part of the project because federal and state agencies are much more likely to provide data with state participation than if RAND conducted the study on its own. Additionally, the study is constructed in such a way that Ms. Baker and her staff will contribute to the project which would very much improve it.

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Chairman Hlawek suggested that, since RAND does not go for a presentation before the Robert Wood Johnson Foundation until September, the Commission wait until the findings from the permanent disability study are available until it makes a decision on RAND's request for funding. The Commissioners agreed.

Update and Discussion Regarding Commission Studies and Projects

Permanent Disability Summit

Ms. Baker reported that the permanent disability conference on the findings from the RAND study is scheduled to take place on Friday, November 21 at the South San Francisco Conference Center near the San Francisco Airport. The purpose of this PD Summit is to provide an opportunity for the workers' compensation community and the public to discuss the findings and recommendations contained in the RAND report. She reported that letters have been sent to selected members of the workers' compensation community requesting that they or their designees present their views about the RAND study at the summit. In an effort to keep the costs to the public as a minimum, she recommended that the Commission absorb the majority of the cost so that the public would be charged only for beverage and box lunch costs.

Chairman Hlawek explained to the Commissioners that this was a change in the direction from what was done last year. In order to keep costs down to the public, it was suggested that the Commission fund the PD Summit in its entirety except for lunch and beverage service in order to encourage more people to attend. With no objections voiced from the Commission, Chairman Hlawek instructed staff to continue along that direction.

Ms. Baker reported that the International Workers' Compensation Foundation (IWCF) offered to cover some of the costs such as travel for guest speakers and a reception for speakers as they did at the Commission's April 1996 Symposium. She said it is helpful because the state of California cannot pick up any costs for beverages or a reception.

Commissioner Hlawek asked if there were any objections from the Commission to accepting the IWCF offer. None were expressed and Ms. Baker was instructed to accept the offer.

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Vocational Rehabilitation Study

Ms. Baker reported that the survey interviews are underway and are expected to continue through October of 1997. Data on the cost, plan kept types, and outcomes with relation to case closures and plan types is now available and was presented at the last Commission meeting in April. The report has been distributed to the Advisory Committee and interested parties of the workers' compensation community for feedback and a revised report will be produced.

Medical Legal Study

Ms. Baker reported that the Medical Legal study is ongoing and a report will be presented at the next Commission meeting in July 1997.

Incomplete Physician Report

Ms. Baker reported that the Incomplete Physician Report project is also underway and is expected to be completed by September 1997.

Workers' Compensation Prototype Information

Ms. Baker reported that the final portion of the video was completed last week. Prototype materials have been distributed and the Commission is receiving feedback from the community and amending the materials. The advisory committee has met several times and continues to review and make changes to both the script and materials. At the last meeting, the Commission voted to approve funds to be used to facilitate the distribution of these materials to California employers and workers.

California Study Group on Young Worker Health and Safety

Ms. Baker reported that the California Study Group on Young Worker Health and Safety has been very successful. They are coordinating strategies with other agencies to protect young people from work related illness and injuries. Composed of groups and individuals dealing with California youth employment and education issues as well as others playing a role in educating and protecting young workers, the study group has had several meetings and is working to develop recommendations that are expected to be issued in December of 1997.

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She stated that a proposal was included in their packets which will extend the study for another year, through December of 1998. The estimated cost is \$20,000. She stated that the project has been successful and all of the agencies have supported the informational gathering and sharing of ideas on how to better inform youth of health and safety issues.

Commissioner O'Hara made a motion to continue the study. The motion was seconded by Commissioner McLeod and passed unanimously.

Illegally Uninsured Employers

Ms. Baker reported that the pilot projects described in the Issue Paper are underway. In addition, EDD has advised that the recommended language to notify all new employers of the requirement to workers' compensation coverage will be included in the next addition of the EDD employers handbook. She said that this has been a successful project and the Commission appreciates the interest and the participation of the community in this endeavor. The task force will continue after they have gathered information from the pilot projects. Right now it is the data collection process.

Industrial Disability Retirement

Ms. Baker reported that the Commission is overseeing the development of an issue paper regarding the interaction among industrial disability retirement determinations in various systems. The issue paper is expected by September of 1997.

Carve Out Study

Ms. Baker reported that the funding of this project is now derived exclusively from the Commission's budget. The independent outside study will take an important step in looking at the long term effectiveness of the alternate workers' compensation programs. The study is ongoing

DWC District Office Profile

Ms. Baker reported that as part of the Commission's responsibility to oversee state operations which administer the workers' compensation program, the Commission requested that staff conduct a profile study of the DWC District Offices. Concern was

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expressed by the community about the closing of some of the district offices and about backlogs and other problems with level of service.

Commission staff developed a preliminary report on the operations of four of the DWC offices. Yesterday, several members of the Commission did a walk through of the LA District Office. A draft paper was developed as well as a memo to the Administrative Director with some of the findings from that study.

Commissioner McLeod stated that he was not able to attend the walk through and requested the observations and views of those Commissioners who attended.

Christine Baker stated that there had been a major clean up from the last time staff visited the office.

Commissioner O'Hara stated that he wasn't at all happy with what he saw. He described it as a down-and-out soup kitchen and observed that DWC was using volunteers to open the mail and file. He said it was outrageous that there isn't enough staff to do the work on hand and that the offices depend on volunteers to do the filing. He said that the Commission must insist that they stop using volunteers, put enough staff in the DWC offices, and stop treating injured workers in this manner. There has been talk about updating and bringing DWC into the computer age. He said that DWC needs to focus on dealing with the system they have right now before thinking about the future. He indicated that he thought it was a temporary condition many years ago and was dismayed to discover that it continues and that the use of volunteers is accepted as regular practice.

Commissioner McLeod asked DWC Chief Deputy Administrative Director Peggy Jones who was in attendance to submit to the Commission DWC's budget for the last three years, depicting staffing with a staff-to-manager ratio as well as any requests to the Department of Finance for augmentation.

Ms. Jones responded that she had just sent the Commission a package with authorized staffing since 1989, including what was recommended by Ernst and Young, the positions that were lost, and what DWC currently has. She said that they now have an augmentation for the Legislature to add another 13 positions to Claims Adjudication, which is basically 5 judge-teams.

Commissioner O'Hara stated that the WCAB reported that there are not enough clerical people. He said the current ratio has one clerk for each referee and that just isn't enough. He questioned why more people aren't put on the payroll. He questioned if this is what they think about injured workers, that they should be put off and not served.

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Ms. Jones replied that DWC puts in people in the positions that are authorized and can't independently put people in the offices. She clarified that DWC doesn't use volunteers as much as it uses community services workers.

Commissioner O'Hara stated that they are still untrained people who are brought in to handle very particular legal files. Clarifying that community service workers are people who have been in trouble and been sentenced by a judge to work in their community, he said that he is in favor of them cleaning up the highways but doesn't want them in workers' compensation files.

Commissioner Rankin stated that he would like the opportunity to walk through one of the DWC District Offices as would Commissioner McLeod.

Commissioner Steinberg stated that he would be interested in hearing Commissioner Vach's impression of the office due to his hands on experience in San Diego. He asked if what was observed in Los Angeles was typical of most boards or is it an aberration.

Commissioner Vach responded that, relative to San Diego, he was impressed with the Los Angeles office, at least its physical capabilities. But he stated that the filing and paper situation is bad everywhere. Workers' Compensation is a paper driven system. And it is all conditioned upon whether or not parties can agree to move a file. If they can, the board seems to be powerless. The judges are not able to direct the parties to get things going. The paper is just a symptom of a complex administrative process that has unfortunately been compounded by the 1993 reforms. He stated that Mark Kahn, the DWC Southern California Regional Manager, admitted that the reforms have done the exact opposite of what they had hoped in streamlining and making the system better. It is actually worse.

In terms of staffing, Commissioner Vach stated that there should be some discussion on short term improvements for the Boards. He said that it can't be fixed with judge teams. That was an arbitrary ratio set back in 1950 which doesn't focus on where the problems are. He recommended that DWC forget the ratio and request needed positions. He suggested that if help is needed from SCIF's attorney staff to be pro tems, that they be brought in. He would like to see more flexibility on the part of the Board to deal with their immediate issues then they can look at the long term. He said that he would like to hear where DWC wants to go with some of those long term issues as well as fixes for the problems they have right now.

Commissioner Hlawek stated that the Commission would be supportive in the budget process if they understood it better in terms of the allocation of resources. Any information that DWC can provide to help the Commission do that would be beneficial to both. But secondarily, and perhaps more important, is the

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Commission's concern about the treatment of injured workers. He stated that he believes the Commission would unanimously support any resources that DWC could contribute toward the treatment of injured workers. He suggested that Ms. Baker draft something for the Commission to look at along those lines and fax them to the Commissioners for forwarding to Casey Young.

Commissioner Vach suggested that the comments be incorporated into the existing draft and make it more forceful. He said that the recommendations in the report are pretty self evident and that there are a lot of other things that haven't been tackled yet with either the Boards or the other administrative agencies. He stated that there was still a long way to go.

Chairman Hlawek stated that any other comments be submitted to Commission staff within a week in order to be incorporated into the draft. If none are received, it should be mailed out.

Commissioner McLeod stated that he was pleased to see Peggy Jones in attendance and welcomed her to open lines of communication between the Commission and DWC.

Commissioner O'Hara stated that he wasn't just throwing rocks at the DWC and offered staff during the walk through help in getting their budget improved. He said that he asked what can the Commission do to make the system work better because it is obviously very broken.

Liens

Ms. Baker reported that there has been some recommendations for a legislative change to the lien process since there continues to be major lien problems. When the Commission came in to the Los Angeles district office about 2 months ago there were 6,000 lien cases with a Declaration of Readiness. A Task Force was initiated and those liens were distributed to various DWC offices for processing. But then another 3,000 liens came in. She said that 85% of the workload in the L.A. District Office is dealing with liens. With the assistance of Commission legal consultant Larry Swezey, a suggestion has been made to alleviate the lien problem with a legislative recommendation. Ms. Baker suggested that a round table discussion be convened with members of the workers' compensation community to discuss the recommendations and get feedback.

The proposal for a round table discussion was moved by Commissioner Rankin and seconded by Commissioner O'Hara. It passed unanimously.

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Annual Report

Commissioner McLeod suggested that the Commission stick to the September issuance of its annual report and issue a separate report when the results of the RAND study are available rather than holding off on publishing the annual report until the RAND study findings are available.

Commissioner Hlawek agreed that the Commission's annual report should be issued in September.

Other Business/ Public Questions/Comments

George Lively, a licensed contractor who has worked with the Commission on its Illegally Uninsured Employer project, said that he is grateful for the work of the Commission and the positive results that have come from this years activities. However, he expressed dissatisfaction with the amount of progress. He said that there must be a broadening of approaches to halt illegally uninsured employers. There is a gross down playing of the significance of the repercussions of uninsured employers, a gross avoidance of any action, and yet a very clear understanding of the illegality and acknowledgment of its existence. He urged the Commission to press this issue.

Uros Jelcic, an injured worker, presented the following suggestions for consideration by the Commission.

1. The Commission must compile workers' compensation data.
2. The Commission should include the letter dated March 12, 1996 in its Fraud Report. That letter from Stephen D. Beck of the Association of California State Attorneys and Administrative Law Judges (ACSA) to the Commission included their concerns about the Division of Workers' Compensation.
3. The Commission should review the Compromise and Release process.
4. The Commission should study the cost of Managed Care.
5. The Commission should review the rehabilitation process.
6. The Commission should review the case *Christian v. WCAB*.
7. The Commission should review Labor Code Sections 5814 and 4650.

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8. The Commission should develop a workers' compensation policy and procedures manual.
9. The Commission should study the workers' compensation appeal process in the state of California.

[Special Note: These suggestions were compiled from Mr. Jelacic's remarks at the Commission meeting and from handwritten notes submitted by Mr. Jelacic.]

Future Meetings

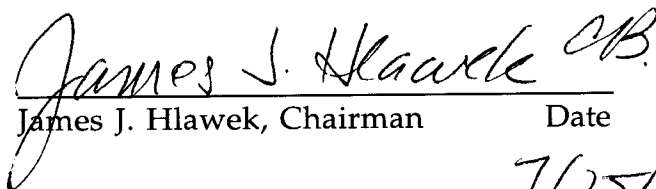
The next meeting of the Commission will be held on Friday, July 25, 1997 at 10 a.m. in the Auditorium in the State Building at 1350 Front Street in San Diego.

Adjournment

The meeting was adjourned at 1:30 p.m.

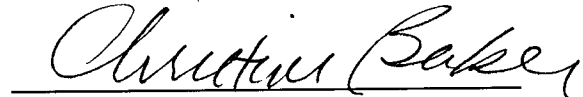
Approved:

Respectfully submitted,


James J. Hlawek, Chairman

Date

7/25/97


Christine Baker, Executive Officer